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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/769,746	01/25/2001	David H. Mowry	11587.40US01	5109
22852	7590	03/17/2004	EXAMINER	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 1300 I STREET, NW WASHINGTON, DC 20005			ODLAND, KATHRYN P	
		ART UNIT	PAPER NUMBER	
			3743	

DATE MAILED: 03/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/769,746	MOWRY, DAVID H.
	<b>Examiner</b>	<b>Art Unit</b>
	Kathryn Odland	3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 18 February 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) 4-6, 9-21 and 26-29 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3, 7, 8, and 22-25 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 14 November 2001.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Election/Restrictions***

1. Applicant's election without traverse of Species 3, Figures 4A-4E in the Office Action dated February 18, 2004 is acknowledged.
2. Claims 4-6, 9-21 and 26-29 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Species, there being no allowable generic or linking claim. Election was made **without** traverse in the Office Action dated February 18, 2004.

Claims 1-3, 7, 8 and 22-25 are under consideration.

### ***Response to Amendment***

The amendments to the title, abstract and drawings are acknowledged.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-3, 7, 8, 24 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Wilk in US Patent No. 5,409,019.

Art Unit: 3743

Regarding claim 1, Wilk discloses a method for supplementing flow of blood to a portion of the cardiovascular system of a patient via inserting a catheter device (20) into the vasculature of the patient and advancing the catheter device to a first location within a first coronary vessel (CA) within the cardiovascular system and forming a blood flow path (@12) from a heart chamber directly to the first coronary vessel via a septal passageway (created by a drill) extending into the heart wall between the heart chamber and the first coronary vessel, as recited in the abstract, columns 4-6 and seen in figures 1-8.

Regarding claim 2, Wilk discloses that as applied to claim 1, as well as, forming a blood flow path from the heart chamber directly to the first coronary vessel via placing a conduit (such as 12) in a heart wall between the heart chamber and the first coronary vessel.

Regarding claim 3, Wilk discloses that as applied to claim 2, as well as, placing the conduit in the heart wall between the heart chamber and the first coronary vessel a conduit is placed in a septal passageway (in the heart wall), as recited in column 3, lines 55-68 and column 4.

Regarding claim 7, Wilk discloses that as applied to claim 1, as well as, a first coronary vessel that is a coronary artery (CA), as discussed throughout.

Regarding claim 8, Wilk discloses that as applied to claim 7, as well as, a coronary artery that is a left anterior descending coronary artery, as seen in figures 1-3A.

Regarding claim 24, Wilk discloses a method for supplementing a flow of blood to a portion of the cardiovascular system of a patient, via inserting a catheter device (20) into the vasculature of the patient and advancing the catheter device to a first location within a coronary vessel within the cardiovascular system, the first location being proximate (just past the blockage as recited in column 4, lines 15-30 and not unlike applicant's depiction) to an obstruction within the coronary vessel (CA); advancing the catheter device through the obstruction to a second position distal to the obstruction, as discussed in column 4; guiding the catheter device through an interstitial passageway extending into a heart wall between a heart chamber and the coronary vessel; and placing a conduit (via 12) in the interstitial passageway extending into the heart wall between the heart chamber and the coronary vessel, wherein the intestinal passageway includes a septal passageway (created by a drill) extending into the heart wall between the heart chamber and the coronary vessel, as recited in columns 3-6 and seen in figures 1-8.

Regarding claim 25, Wilk discloses that as applied to claim 24, as well as, a coronary vessel that is a coronary artery (CA), as discussed throughout.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 22 and 23 rejected under 35 U.S.C. 103(a) as being unpatentable over Wilk in US Patent No. 5,409,019.

Regarding claims 22 and 23, Wilk discloses that as applied to claim 22. However, Wilk does not explicitly recite distending the obstruction within the coronary artery via inflating a balloon at the obstruction within the coronary vessel, aka angioplasty. On the other hand, angioplasty is extraordinarily well known in the art. Thus, it would be obvious to one with ordinary skill in the art to in addition to moving past the occlusion to also perform angioplasty for the purpose of compressing the plaque against the wall to clear a larger space.

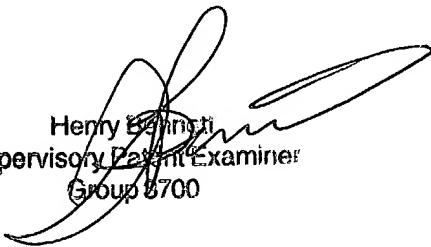
***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathryn Odland whose telephone number is (703) 306-3454. The examiner can normally be reached on M-F (7:30-5:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A Bennett can be reached on (703) 308-0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KO



Henry T. Benincasa  
Supervisory Patent Examiner  
Group 3700